EMPLOYERS' LIABILITY ACT—INJURY RECEIVED WHILE REPAIRING ENGINE WITHDRAWN FROM INTERSTATE SERVICE NOT COMPENSATIVE UNDER FEDERAL ACT—The plaintiff, an employee in the general repair shops of an interstate carrier, was injured while engaged in the repairing of an engine which had been temporarily withdrawn from interstate service. After two months the engine was again employed in interstate commerce. The plaintiff received an award under the state compensation statute (Calif. Sts. 1917, ch. 586) and the defendant appealed on the ground that the accident came within the scope of the Federal Employer's Liability Act of April 22, 1908 (35 Stat. at L. 65), because the plaintiff was engaged in interstate commerce at the time of the accident. *Held,* that the award should be affirmed. *Industrial Accident Commission of Calif. v. Payne* (1922, U. S.) 42 Sup. Ct. 489.

The instant case is an illustration of the difficulties incident to the application of the Federal Act. See *Payne v. Industrial Acc. Comm.* (1921, Calif.) 195 Pac. 81; *Hines v. Industrial Acc. Comm.* (1920) 184 Calif. 1, 192 Pac. 859. The Federal Act applies to employees engaged in interstate commerce to the exclusion of the various state compensation acts. *New York Central Ry. v. Winfield* (1916) 244 U. S. 147, 37 Sup. Ct. 546; COMMENTS (1916) 25 YALE LAW JOURNAL, 497. The test is whether the employee is, at the time the injury occurs, engaged in interstate commerce or work so closely related thereto as to be practically a part of it. See *Shanks v. Ry.* (1915) 239 U. S. 556, 36 Sup. Ct. 188; *C. B. & Q. Ry. v. Harrington* (1916) 241 U. S. 177, 36 Sup. Ct. 517. The cases fall into two classes, dependent on whether they deal with stationary or moving instrumentalities. In the first class the Federal Act has been allowed wide scope. *Pederson v. D. L. & W. Ry.* (1913) 229 U. S. 146, 33 Sup. Ct. 648 (employee carrying bolts to be used on a bridge for both interstate and intrastate trains); *Phila. B. & W. Ry. v. Smith* (1919) 250 U. S. 101, 39 Sup. Ct. 396 (cook for bridge-repairing gang); *Guida v. Pennsylvania Ry.* (1918) 183 App. Div. 822, 171 N. Y. Supp. 285 (laborer cleaning boilers used in the process of furnishing electricity to both interstate and intrastate trains); see also *Grybowski v. Erie Ry.* (1915) 88 N. J. L. 1, 95 Atl. 764; *Erie Ry. v. Szary* (1919, C. C. A. 2d) 259 Fed. 178. In the second class of cases the decisions are not in agreement. The Supreme Court decided in the instant case that the length of time taken for repair determines the engine's character as an instrument of commerce. A better test seems to be whether the withdrawal is temporary or permanent. *Koons v. Phila. & R. Ry.* (1921) 271 Pa. 468, 114 Atl. 262; *Louisville & N. Ry. v. Pettis* (1921, Ala.) 89 So. 201. The Supreme Court has held also that injuries received by employees while engaged in repairing engines which have been withdrawn for less than a week from a service indiscriminately interstate and intrastate and which are to be returned to the same service are not compensative under the Federal Act. *Minneapolis & St. L. Ry. v. Winters* (1917) 242 U. S. 353, 37 Sup. Ct. 170. This is contrary to the general rule. *Cook v. Southern Ry.* (1918) 109 S. C. 377, 96 S. E. 148; *Missouri, K. & T. Ry. v. Denahy* (1914, Tex. Civ. App.) 165 S. W. 529. The Supreme Court's interpretation of the Federal Act, however, is ultimately binding on all courts. *Seaboard Air Line v. Horton* (1914) 233 U. S. 492, 34 Sup. Ct. 635; *Montgomery v. So. Pac. Ry.* (1913) 64 Or. 597, 131 Pac. 507. On principle it is difficult to see why the stationary or movable character of the instrumentality should affect the application of the Act. See (1921) 31 YALE LAW JOURNAL, 96.

EQUITY—ORAL CONTRACT TO CONVEY LAND—SPECIFIC PERFORMANCE—PERSONAL SERVICES.—Under an oral contract the plaintiffs lived with, boarded, and cared for the defendant's testator, having sold their home and business in reliance upon his oral promise to give them his residence at his death. The plaintiffs sued for specific performance, there being no remedy at law for the loss of